

AMENDED IN ASSEMBLY APRIL 17, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

AMENDED IN ASSEMBLY MARCH 26, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 612

Introduced by Assembly Member Ruskin

February 21, 2007

An act to amend Sections 3110, 3110.5, and 3111 of, and to add Section 3110.6 to, the Family Code, relating to child custody.

LEGISLATIVE COUNSEL’S DIGEST

AB 612, as amended, Ruskin. Child custody—~~investigations~~. *evaluations*.

Existing law authorizes the court, in a contested proceeding involving child custody or visitation rights, to appoint a child custody evaluator to conduct a child custody evaluation in cases in which the court determines it is in the best interests of the child. Existing law requires court-connected and private child custody evaluators to complete a described domestic violence and child abuse training program and to comply with other requirements. Existing law requires the Judicial Council to formulate a statewide rule of court by January 1, 2002, that establishes education, experience, and training requirements for all court-appointed child custody evaluators, and requires child custody evaluators to declare under penalty of perjury that they meet all of the education, experience, and training requirements of the rule and, if applicable, possess a license in good standing. For purposes of these provisions, court rules provide that a “child custody evaluator” is a “court-appointed investigator.”

This bill would codify those court rules to provide that a “child custody evaluator” is a “court-appointed investigator.” The bill would permit a court, as part of a child custody evaluation pursuant to these provisions, to grant a motion for the psychological testing ~~or diagnosis~~ of a parent *intended to produce a diagnosis* only for good cause shown, as specified. The bill also would require the child custody evaluator that conducts the testing ~~or diagnosis~~ to summarize the data-gathering procedures, information sources, and the amount of time spent conducting the testing or diagnosis, and to present all relevant information, including information that does not support the conclusions reached.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3110 of the Family Code is amended to
2 read:
3 3110. As used in this chapter:
4 (a) “Court-appointed investigator” means a probation officer,
5 domestic relations investigator, or court-appointed evaluator
6 directed by the court to conduct an investigation pursuant to this
7 chapter.
8 (b) “Child custody evaluator” means a court-appointed
9 investigator.
10 SEC. 2. Section 3110.5 of the Family Code is amended to read:
11 3110.5. (a) A person shall not be a court-connected,
12 court-appointed, or private child custody evaluator under this
13 chapter unless the person has completed the domestic violence
14 and child abuse training program described in Section 1816 and
15 has complied with Rules 5.220 and 5.230 of the California Rules
16 of Court.
17 (b) (1) On or before January 1, 2002, the Judicial Council shall
18 formulate a statewide rule of court that establishes education,
19 experience, and training requirements for all court-connected,
20 court-appointed, and private child custody evaluators appointed
21 pursuant to this chapter, Section 730 of the Evidence Code, or
22 Chapter 15 (commencing with Section 2032.010) of Title 4 of Part
23 4 of the Code of Civil Procedure.

1 (A) The rule shall require a child custody evaluator to declare
2 under penalty of perjury that he or she meets all of the education,
3 experience, and training requirements specified in the rule and, if
4 applicable, possesses a license in good standing. The Judicial
5 Council shall establish forms to implement this section. The rule
6 shall permit court-connected, court-appointed, and private child
7 custody evaluators to conduct evaluations if they meet all of the
8 qualifications established by the Judicial Council. The education,
9 experience, and training requirements to be specified for
10 court-connected, court-appointed, and private child custody
11 evaluators shall include, but not be limited to, knowledge of the
12 psychological and developmental needs of children and
13 parent-child relationships.

14 (B) The rule shall require all evaluators to utilize comparable
15 interview, assessment, and testing procedures for all parties that
16 are consistent with generally accepted clinical, forensic, scientific,
17 diagnostic, or medical standards. The rule shall also require
18 evaluators to inform each adult party of the purpose, nature, and
19 method of the evaluation.

20 (C) The rule may allow courts to permit the parties to stipulate
21 to an evaluator of their choosing with the approval of the court
22 under the circumstances set forth in subdivision (d). The rule may
23 require courts to provide general information about how parties
24 can contact qualified child custody evaluators in their county.

25 (2) On or before January 1, 2004, the Judicial Council shall
26 include in the statewide rule of court created pursuant to this
27 section a requirement that all court-connected, court-appointed,
28 and private child custody evaluators receive training in the nature
29 of child sexual abuse. The Judicial Council shall develop standards
30 for this training that shall include, but not be limited to, the
31 following:

32 (A) Children's patterns of hiding and disclosing sexual abuse
33 occurring in a family setting.

34 (B) The effects of sexual abuse on children.

35 (C) The nature and extent of child sexual abuse.

36 (D) The social and family dynamics of child sexual abuse.

37 (E) Techniques for identifying and assisting families affected
38 by child sexual abuse.

39 (F) Legal rights, protections, and remedies available to victims
40 of child sexual abuse.

(c) In addition to the education, experience, and training requirements established by the Judicial Council pursuant to subdivision (b), on or after January 1, 2005, a person shall not be a child custody evaluator under this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure unless the person meets at least one of the following criteria:

(1) He or she is licensed as a physician under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and either is a board certified psychiatrist or has completed a residency in psychiatry.

(2) He or she is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(3) He or she is licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(4) He or she is licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(5) He or she is a court-connected, court-appointed, or private evaluator who has been certified by the court as meeting all of the qualifications for court-connected, court-appointed, or private evaluators, as specified by the Judicial Council pursuant to subdivision (b).

(d) Subdivision (c) does not apply in a case in which the court determines that there are no evaluators who meet the criteria of subdivision (c) who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to approval by the court.

(e) A child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences, shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that licensee.

(f) On or after January 1, 2005, a court-connected, court-appointed, or private child custody evaluator shall not evaluate, investigate, or mediate an issue of child custody in a

1 proceeding pursuant to this division unless that person has
2 completed child sexual abuse training as required by this section.

3 SEC. 3. Section 3110.6 is added to the Family Code, to read:

4 3110.6. (a) The court shall grant a motion for the psychological
5 testing ~~or diagnosis~~ of a parent *intended to produce a diagnosis*,
6 as part of a child custody evaluation pursuant to this chapter, only
7 for good cause shown, pursuant to Section 2032.310 of the Code
8 of Civil Procedure, *except that the requirement to provide a meet*
9 *and confer declaration shall not apply.*

10 (b) Psychological testing ~~or of a parent intended to produce a~~
11 diagnosis may be conducted only by written court order, by a
12 licensed physician or psychologist who meets the requirements of
13 subdivision (c) of Section 2032.020 of the Code of Civil Procedure.

14 (c) The order for a mental or psychological examination shall
15 include a description of the legally admissible evidence that
16 demonstrates the need for the testing ~~or intended to produce a~~
17 diagnosis.

18 (d) The child custody evaluator that conducts the psychological
19 testing ~~or intended to produce a~~ diagnosis shall summarize the
20 data-gathering procedures, information sources, and the amount
21 of time spent conducting the testing ~~or diagnosis~~, and shall present
22 all relevant information, including information that does not
23 support the conclusions reached. Nonscientific labels and diagnoses
24 that are not consistent with diagnostic or medical standards
25 generally accepted by the medical, psychiatric, and psychological
26 communities shall be specifically excluded as allowable diagnoses
27 for court use.

28 (e) *Nothing in this section precludes a child custody evaluator*
29 *from freely interviewing parents and children, observing*
30 *parent-child interaction, speaking to collateral sources, consulting*
31 *over psychological data, or using his or her professional expertise*
32 *to integrate data, assess and evaluate psychological issues, or*
33 *communicate the results of those analyses to the court consistent*
34 *with ethical and professional standards.*

35 SEC. 4. Section 3111 of the Family Code is amended to read:

36 3111. (a) In a contested proceeding involving child custody
37 or visitation rights, the court may appoint a child custody evaluator
38 to conduct a child custody evaluation in cases in which the court
39 determines it is in the best interests of the child. The child custody
40 evaluation shall be conducted in accordance with the standards

1 adopted by the Judicial Council pursuant to Section 3117, and all
2 other standards adopted by the Judicial Council regarding child
3 custody evaluations. If directed by the court, the court-connected,
4 court-appointed, or private child custody evaluator shall file a
5 written confidential report on his or her evaluation. At least 10
6 days before any hearing regarding custody of the child, the report
7 shall be filed with the clerk of the court in which the custody
8 hearing will be conducted and served on the parties or their
9 attorneys, and any other counsel appointed for the child pursuant
10 to Section 3150. The report may be considered by the court.

11 (b) The report shall not be made available other than as provided
12 in subdivision (a), or as described in Section 204 of the Welfare
13 and Institutions Code or Section 1514.5 of the Probate Code. Any
14 information obtained from access to a juvenile court case file, as
15 defined in subdivision (e) of Section 827 of the Welfare and
16 Institutions Code, is confidential and shall only be disseminated
17 as provided by paragraph (4) of subdivision (a) of Section 827 of
18 the Welfare and Institutions Code.

19 (c) The report may be received in evidence on stipulation of all
20 interested parties and is competent evidence as to all matters
21 contained in the report.